

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EVARISTO PARABAL and GERARDO
GARCIA, *on behalf of themselves and
others similarly situated,*

Plaintiffs,

-v.-

333 HUDSON CORP. and OK RYON,
a/k/a Alex Kim,

Defendants.

21 Civ. 10575 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

Plaintiffs filed this putative class and collective action on December 10, 2021, asserting claims under the Fair Labor Standards Act (the “FLSA”) and the New York Labor Law. (Dkt. #1). On March 2, 2022, the Court was advised that following a successful mediation, the parties reached a resolution on all issues in this case. (Dkt. #19). That same day, Plaintiffs filed a notice of voluntary dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), which purported to release Defendants from all claims brought by Plaintiff Gerardo Garcia without prejudice. (Dkt. #18).

The Second Circuit has affirmed that when a Plaintiff files a notice of voluntary dismissal “under Rule 41(a)(1)(A)” — whether “with prejudice” or “without prejudice” — a “district court” is to “inquir[e] as to the existence of any FLSA settlement.” *Samake v. Thunder Lube, Inc.*, 24 F.4th 804, 811 (2d Cir. 2022). If so, a district court is to “engage in a *Cheeks* fairness review.” *Id.*

(citing *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015)). If not, “the notice of dismissal should be so-ordered.” *Id.*

Accordingly, it is hereby ORDERED that within 21 days of this Order, the parties must file a letter stating whether the parties have settled Plaintiffs’ claims, *viz.*, whether Plaintiffs or their counsel received any consideration for dismissing this action. If the parties settled Plaintiffs’ claims, then the parties must provide this Court with their completed settlement agreement along with a joint letter regarding the fairness of the settlement agreement, in accordance with the FLSA and Second Circuit law. *See, e.g., Cheeks*, 796 F.3d 199. If the parties did not settle Plaintiffs’ claims, then their letter should so advise the Court.

SO ORDERED.

Dated: March 3, 2022
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Faila".

KATHERINE POLK FAILLA
United States District Judge